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(Specially Appearing)*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

MAXIMILIAN KLEIN and SARAH
GRABERT, individually and on behalf of all
others similarly situated,

Plaintiffs,

vs.

FACEBOOK, INC., a Delaware corporation,
Defendant.

Case No. 5:20-cv-08570-LHK

CLASS ACTION

**PLAINTIFF SHARI ROSENMAN’S
RESPONSE TO FACEBOOK, INC.’S
MOTION FOR ADMINISTRATIVE
RELIEF TO CONSIDER WHETHER
CASES SHOULD BE RELATED AND
CONSOLIDATED**

Judge: Hon. Lucy Koh

1 Counsel for Plaintiff Shari Rosenman (“Plaintiff”) hereby specially appear on behalf of
2 Plaintiff for the limited purpose of responding to Defendant Facebook, Inc.’s (“Facebook”) administrative motion (“Motion”) (ECF No. 79) to consider whether to relate *Rosenman v.*
3 *Facebook, Inc.*, No. 3:21-cv-02108-LB (“*Rosenman*”) to, and consolidate it with, the cases
4 consolidated in *Klein v. Facebook, Inc.*, No. 5:20-cv-08570-LHK (“*Klein*”).

5
6 Plaintiff responds to Facebook’s Motion as follows:

7 For reasons that will be fully set forth in Plaintiff’s Motion to Remand (to be filed by
8 April 26, 2021, per *Rosenman* ECF No. 11), the *Rosenman* action was improvidently removed
9 and does not belong in federal court. This Court has no jurisdiction over the *Rosenman* matter.
10 The Complaint is not federal in character and does not assert a federal law claim or a violation
11 of any federal law.

12 Plaintiff’s California Unfair Competition Law (“UCL”) action is a standard State law
13 consumer claim that challenges Facebook’s privacy policies. The *Rosenman* Complaint alleges
14 that Facebook forced consumers to accept inferior and degraded privacy settings and
15 protections, which was unfair, unlawful, and deceptive under the UCL and that Facebook has
16 been unjustly enriched by that conduct. Plaintiff’s claim does not depend on a finding that
17 Facebook is a “monopoly” or engaged in “monopolistic conduct.” Facebook’s conduct as
18 alleged by Plaintiff Rosenman violates the UCL regardless of whether it represents a violation
19 of federal antitrust law. Plaintiff’s right to relief does not depend on resolution of any disputed
20 federal question, federal law is not essential to her claim, and Plaintiff will not have to establish
21 that Facebook violated any federal law in order to prevail on her claims. The issues raised by
22 the *Rosenman* action are purely State law issues and are properly resolved by a State, not a
23 federal, court.

24 Notwithstanding the foregoing and without conceding jurisdiction or waiving any
25 substantive arguments, it would be in the interest of judicial efficiency to relate this action to
26 *Klein* now, but only for the sole and limited purpose of having this Court adjudicate Plaintiff
27 *Rosenman*’s remand motion. To the extent that any ruling to relate is for that limited purpose
28 only, and all of Plaintiff’s arguments in support of remand are expressly reserved, Plaintiff does

1 not oppose Facebook's Motion to relate the cases. For the foregoing reasons, Plaintiff opposes
2 any effort to consolidate the actions at this time.

3
4 Dated: April 5, 2021

Respectfully submitted,

5 **POMERANTZ LLP**

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7 By: /s/ Ari Y. Basser

Jordan L. Lurie

Ari Y. Basser

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9 *Attorneys for Plaintiff*
10 *(Specially Appearing)*
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